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PATENT APPLICATION
Attorney Docket No.: ANAT-1015US2
(ELL-036)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Frampton E. ELLIS, III)
)
U.S. Application No.: 09/527,019)
)
Filed: 03/16/2000)
)
For: Removable Rounded Midsole)
Structures and Chambers with)
Computer Controlled Processor-)
Controlled Variable Pressure)

Group Art Unit: 3728

Examiner: Anthony Stashick

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TECHNOLOGY CENTER R3700

PETITION FOR REVIEW OF DRAWING OBJECTION

Commissioner for Patents
Washington, D.C. 20231

Sir:

This is a petition under 37 C.F.R. § 1.181 for review of the drawing objection as made by the Examiner in the above-identified application in the Final Rejection dated January 2, 2002, and maintained by the Examiner in the Advisory Action dated May 22, 2002. This petition is timely since it has been filed within two months of the date of the Advisory Action wherein the drawing objection was maintained.

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I certify that this document, along with any document referred to as being attached, is being deposited with the U.S. Postal Service on **July 22, 2002** as first class mail under 37 C.F.R. §1.8 and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

Lynne Webb
(Name of person signing paper)

Lynne Webb
(Signature of person mailing paper)

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The drawing objection at issue in this petition was made by the Examiner in the Final Rejection dated January 2, 2002. The applicant requested reconsideration of the drawing objection in the Amendment After Final filed on April 2, 2002 and the Examiner maintained the drawing objection in the Advisory Action dated May 22, 2002.

I. The Relief Requested

By this petition, the applicant requests that the drawing objection under 37 C.F.R. § 1.83(a) in the Final Rejection dated January 2, 2002, be withdrawn for the reasons given below.

II. The Drawing Objection

The objection to the drawings as made in the Final Rejection dated January 2, 2002, reads as follows:

"The drawings are objected to under 37 C.F.R. §1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mechanical fasteners, a snap fit and 'combinations thereof', as stated in claim 4 [sic] and the computer control specifics of claim 14, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. The drawings submitted on October 5, 2001 have been received. The changes to the existing drawing have been approved but the addition [sic] of drawing 11Q, being [sic] a schematic drawing of the claimed subject matter does not clearly show what applicant is claiming, especially the 'combinations thereof'. Therefore, this drawing will not be entered."

The applicant traversed this drawing objection in the Amendment After Final filed on April 2, 2002, and, in response thereto in the Advisory Action dated May 22, 2002, the Examiner stated that the Amendment After Final did not place the application in condition for allowance, the Examiner did not indicate that any rejections or objections made in the Final Rejection were withdrawn or overcome, and the Examiner indicated that the status of the claims remained as stated in the Final Rejection. Accordingly,

from this the applicant concluded that the Examiner had maintained the drawing objections in the Advisory Action dated May 22, 2002.

III. Facts, Evidence and Arguments in Support of the Petition

A. Claim 24

In section 1 of the Final Rejection dated January 2, 2002, the Examiner objected to the drawings under 37 C.F.R. § 1.83(a) asserting that the drawings do not show every feature of the invention as represented in the claims. In particular, the Examiner stated that use of "mechanical fasteners, snap fits, and combinations thereof" is not clearly depicted in the new Figure 11Q - a schematic representation of "mechanical fasteners, snap fits, and combinations thereof" which was submitted by the Applicant on October 5, 2001.¹ On this basis, the Examiner has refused to enter this new Figure 11Q. The Examiner has asserted that new Figure 11Q does not depict what is claimed in Claim 4 [sic].²

First, this drawing objection should be withdrawn on the basis the claim 4 has been canceled without prejudice to resubmission and thus it is not necessary to show the features of canceled claim 4 in the drawings.

Second, as clearly stated in the MPEP § 608.02, Examiner Note No. 3, if drawings are disapproved, an explanation must be provided by the Examiner. In his rejection of Figure 11Q, the Examiner has merely stated that the drawing "does not clearly show what the applicant is claiming" without providing any rationale or explanation for such a conclusion. Thus, the Examiner has not met his burden of providing an explanation of why new Figure 11Q has been disapproved. For this additional reason, the drawing objection based on claim 24 should be withdrawn.

¹New Figure 11Q as submitted on October 5, 2001, is enclosed for the convenience of the reader.

²The Applicant presumes that the Examiner's reference to Claim 4 was an inadvertent typographical mistake and that the Examiner intended to refer to Claim 24 since claim 4 has been canceled without prejudice to resubmission and claim 24 refers to the "mechanical fasteners, snap fits, and combinations thereof" which are at issue in the drawing objection.

Thirdly, there is no dispute that Figure 11Q shows the "mechanical fasteners, a snap fit, interlocking geometries, and combinations thereof" since the Examiner admitted in the Final Rejection dated January 2, 2002, that Figure 11Q is "... a schematic drawing of the claimed subject matter..." See Section 1 of the Final Rejection dated January 2, 2002. Accordingly, Figure 11Q clearly meets the requirement that it shows every feature of the subject matter claimed in claim 24.

Finally, the Applicant respectfully disagrees with the Examiner's conclusion. As per 37 C.F.R. § 1.81(b), "Drawings may include illustrations which facilitate an understanding of the invention." Claim 24 of the present application states: "... wherein said inner shoe is releasably secured to said outer shoe by a releasable securing structure selected from the group consisting of mechanical fasteners, a snap fit, interlocking geometries, and combinations thereof." Figure 11Q uses interconnected block diagrams to clearly illustrate the attachment of the removable midsole insert 145 to the bottom sole 149 via "mechanical fasteners 301, or adhesives 302, or snap fit 303, or combinations thereof". Moreover, lines 12-20 of page 46 of the specification describe how, after the bottom sole 149 is attached, the removable midsole insert 145 may be inserted into the interior cavity of the upper 21 and be releasably secured to the top side of the bottom sole 149 by any suitable method, including mechanical fasteners, adhesives, snap-fit arrangements, reclosable compartments, interlocking geometries, or other similar structures. In consideration of the forgoing facts, Figure 11Q quite clearly depicts what is claimed in Claim 24 and what is described on page 46, lines 12-20, of the specification. Therefore, since new Figure 11Q clearly shows all of the elements claimed in claim 24 and finds basis in the specification as discussed above, the Applicant respectfully requests that Figure 11Q submitted on October 5, 2001, be entered as part of this application and that this objection to the drawings be withdrawn.

B. Claim 14

Also in Section 1 of the Final Rejection dated January 2, 2002, the Examiner expressly objected to the manner in which the computer control specifics of Claim 14

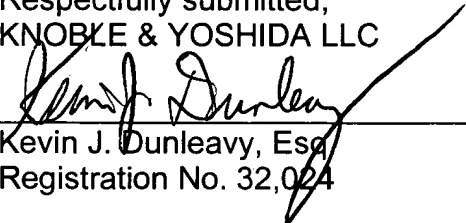
were depicted in the drawings. The computer controller is not referred to in Claim 14 as the Examiner indicates. For this reason alone, the objection to the drawings based on claim 14 should be withdrawn.

A computer controller is referred to in Claims 12 and 13, although the Examiner has raised no objection to the drawings based on these claims. In Claim 12, at least one computer controller is placed within a compartment located inside the inner shoe. Furthermore, as per Claim 13, that compartment is located in the upper portion of the midsole. No other claims refer to the computer control system. All of these aspects of the control system 300 are shown in Figure 11P, which has been approved and entered by the Examiner in the Final Rejection dated January 2, 2002.³ In this figure, the control system 300 is clearly depicted as being located in a compartment within a shank 169, which is, in turn, positioned within the removable midsole section 145 that forms the upper portion of the midsole. For at least these reasons, favorable consideration and withdrawal of the objection to the drawings based on claim 14 is respectfully requested.

It is believed that no fee is required for this petition since this petition is made under 37 C.F.R. § 1.181 and that section does not expressly state that a petition fee is required. See, e.g. 37 C.F.R. § 1.181(d). If it is determined that a petition fee is required, then the U.S. Patent and Trademark Office is hereby authorized to charge the petition fee to deposit account no. 50-0462.

Respectfully submitted,
KNOBLE & YOSHIDA LLC

By:



Kevin J. Dunleavy, Esq.
Registration No. 32,024

Date

Customer No. 21302
Knoble & Yoshida, LLC
Eight Penn Center, Suite 1350
1628 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103
Telephone: 215-599-0600

³ A copy of Figure 11P is enclosed for the convenience of the reader.

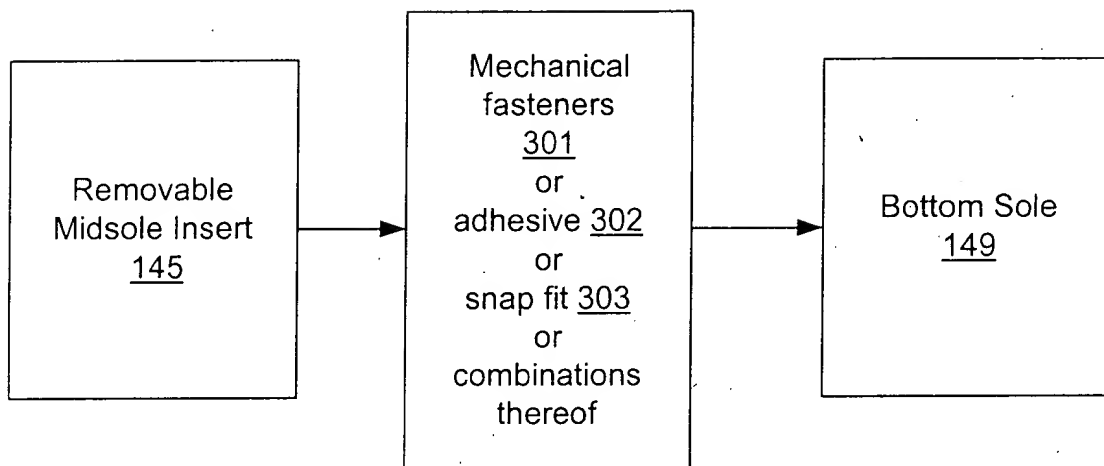
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FIG. 11Q



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FIG. 11P

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